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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,350	09/16/2003	Susanne Dahl Thomsen	0459-0748P	2062

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EXAMINER

GRAY, JILL M

ART UNIT PAPER NUMBER

1774

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/662,350	Applicant(s) THOMSEN ET AL.	
	Examiner Jill M. Gray	Art Unit 1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22, 24 and 27-34 is/are rejected.
- 7) ☒ Claim(s) 23, 25 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/16/03 and 2/27/04</u> | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Objections***

Claim 23 and 25-26 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend upon another multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

Claim 28 is objected to because of the following informalities: "form" should be "from". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 5, 9, 18, 20-22, 24, 27, 30-31 and 33-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

More specifically, in claim 1, the language of "based on polyolefin polymer" is broad. Also, the language of "comprising essentially of" is indefinite and should be "consisting essentially of". In addition, the requirement for "at least 25% active content" is vague, because it does not clearly set forth what the active components are.

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Accordingly, the metes and bounds for which patent protection is being sought are not clear.

Claim 5 is indefinite because the units of measurement are not indicated.

Regarding claim 9, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Also in claim 9, the language of "compounds that are based on D-sorbitol" necessarily includes the specific compound of line 5, which leads to redundancy in the claim.

Claim 18 is vague and indefinite because the language of "based on polyolefin" is broad.

In claim 20, the language of "based on polyolefin" is vague and indefinite because this language is broad. Also, the language of "comprising essentially of" is indefinite. The suggested language is "consisting essentially of".

Claims 21 and 22 are indefinite for the reasons stated above.

In claim 24, the language of "material based on polyolefin based staple fiber" is vague and indefinite for reasons previously stated.

In claim 27, the language of "comprising essentially of" is indefinite for reasons previously stated. The suggest language is "consisting essentially of".

In claim 30, the language of "at least 25% active content" is indefinite for reasons previously stated.

Claim 31 is indefinite because the units of measurement are not stated.

Claims 33 and 34 provides for the use of a fiber in preparing a nonwoven material, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 33 and 34 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7-14, 17, and 20-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Asanuma et al, 5,478,646 (Asanuma).

Asanuma teaches a polypropylene fiber comprising talc in a proportion of 100 to 10,000, as required by claims 1 and 8-11. The polypropylene can be a syndiotactic polypropylene homopolymer as required by claims 12-13. See Example 1. In addition, Asanuma teaches that the polypropylene has a dtex value within the range contemplated by applicants in claim 17. See column 1, line 48. As to the crystallinity, Asanuma teaches that his polypropylene has syndiotactic pentad fractions of preferably 0.8 or more because those of less than 0.7 do not give sufficient characteristics of

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crystalline polypropylene. Accordingly, it is the examiner's position that based upon this teachings, one of ordinary skill in the art has reason to believe that the fiber crystallinity of Asanuma is within the range contemplated by applicants in claims 1, 7, 20, 21, and 22.

Therefore, the prior art reference Asanuma anticipates the invention as claimed in present claims 1, 7-13, 17 and 20-22.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-6, 15-19, 24, 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asanuma et al, 5,478,646 (Asanuma) as applied above to claims 1, 7-13, 17 and 20-22, in view of Gupta et al, 6,177,191 B1 (Gupta).

Asanuma is a set forth above but does not teach the application of a spin finish. Gupta teaches polypropylene fibers having a spin finish applied thereto. The spin finish is a polysiloxane with an active content as required by claims 1, 4 and 30. Note Examples 1A. The spin finish is applied to fibers having a dtex within applicants' range as set forth in claims 5-6, 17 and 30-31. See Examples. Gupta does not specifically teach the draw ratio, but teaches that his fibers are drawn to a particular degree to result in the dtex within the claimed range. This teaching would have rendered obvious a draw ratio within the claimed range. Accordingly, it is the examiner's position that

based upon the teachings of Gupta, one of ordinary skill in the art would reasonably presume that the draw ratio of Asanuma is within the range contemplated by applicants in claims 16, 27 and 29. As to claims 2 and 3, Gupta teaches the same amount of addition of the spin finish as applicants. Accordingly, this property would be the same as well. As to the bulk of claims 15 and 24, this property would have been obvious to choose and determine during routine experimentation commensurate with the desired properties of the end product.

Accordingly, the combined teachings of Asanuma and Gupta, would have rendered obvious the invention as claimed in present claims 2-6, 15-19, 24, 27-32.

No claims are allowed.

### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jill M. Gray whose telephone number is 571-272-1524. The examiner can normally be reached on M-F 10:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jill M. Gray  
Examiner  
Art Unit 1774

jmg